

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JOHN DOE 1; JOHN DOE 2; JANE
DOE 1; JANE DOE 2; JANE DOE 3;
and all persons similarly situated,

Plaintiffs,

v.

WASHINGTON STATE
DEPARTMENT OF CORRECTIONS;
STEPHEN SINCLAIR,

Defendants.

NO: 2:21-CV-5059-TOR

STIPULATED PROTECTIVE
ORDER

BEFORE THE COURT is the parties Stipulated Motion for Protective Order (ECF No. 107). The matter was submitted for consideration without oral argument. The Court has reviewed the parties' submission and the file herein and is fully informed. For good cause shown, the motion is granted.

ACCORDINGLY, IT IS HEREBY ORDERED:

The parties have jointly stipulated to the terms and moved for entry of the Stipulated Protective Order set forth herein, and the Court hereby enters the

1 following Stipulated Protective Order, the terms of which shall be binding on the
2 parties from the date of entry forward:

3 **1. PURPOSE AND LIMITATIONS**

4 Discovery in this action is likely to involve production of confidential,
5 proprietary, or private information for which special protection may be warranted.
6 Accordingly, the parties hereby stipulate to and petition the Court to enter the
7 following Stipulated Protective Order. The parties acknowledge that this
8 agreement does not confer blanket protection on all disclosures or responses to
9 discovery, the protection it affords from public disclosure and use extends only to
10 the limited information or items that are entitled to confidential treatment under the
11 applicable legal principles, and it does not presumptively entitle parties to file
12 confidential information under seal.

13 **2. "CONFIDENTIAL" MATERIAL**

14 "Confidential" material shall include the following documents and tangible
15 things produced or otherwise exchanged:

- 16 a. Documents subject to this Court's Preliminary Injunction Order;
17 b. Medical or other confidential records of Plaintiffs.

18 **3. SCOPE**

19 The protections conferred by this agreement cover not only confidential
20 material (as defined above), but also (1) any information copied or extracted from

1 confidential material; (2) all copies, excerpts, summaries, or compilations of
2 confidential material; and (3) any testimony, conversations, or presentations by
3 parties or their counsel that might reveal confidential material. However, the
4 protections conferred by this agreement do not cover information that is in the
5 public domain or becomes part of the public domain through trial or otherwise.

6 **4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

7 **4.1 Basic Principles.** A receiving party may use confidential material that is
8 disclosed or produced by another party or by a non-party in connection with this
9 case only for prosecuting, defending, or attempting to settle this litigation.

10 Confidential material may be disclosed only to the categories of persons and under
11 the conditions described in this agreement. Confidential material must be stored
12 and maintained by a receiving party at a location and in a secure manner that
13 ensures that access is limited to the persons authorized under this agreement.

14 **4.2 Disclosure of “CONFIDENTIAL” Information or Items.** Unless
15 otherwise ordered by the Court or permitted in writing by the designating party, a
16 receiving party may disclose any confidential material only to:

17 a) The receiving party’s counsel of record in this action, as well as
18 employees of counsel to whom it is reasonably necessary to disclose the
19 information for this litigation;

1 b) The officers, directors, and employees (including in house counsel) of
2 the receiving party to whom disclosure is reasonably necessary for this litigation;

3 c) Experts and consultants to whom disclosure is reasonably necessary
4 for this litigation and who have signed the “Acknowledgment and Agreement to
5 Be Bound” (Exhibit A);

6 d) The Court, Court personnel, and court reporters and their staff;

7 e) Copy or imaging services retained by counsel to assist in the
8 duplication of confidential material, provided that counsel for the party retaining
9 the copy or imaging service instructs the service not to disclose any confidential
10 material to third parties and to immediately return all originals and copies of any
11 confidential material;

12 f) During their depositions, witnesses in the action to whom disclosure is
13 reasonably necessary and who have signed the “Acknowledgment and Agreement
14 to Be Bound” (Exhibit A), unless otherwise agreed by the designating party or
15 ordered by the Court. Pages of transcribed deposition testimony or exhibits to
16 depositions that reveal confidential material must be separately bound by the court
17 reporter and may not be disclosed to anyone except as permitted under this
18 agreement;

19 g) The author or recipient of a document containing the information or a
20 custodian or other person who otherwise possessed or knew the information.

1 h) Mediators retained by the parties to resolve this matter.

2 **4.3 Filing Confidential Material.** Before filing confidential material or
3 discussing or referencing such material in court filings, the filing party shall confer
4 with the designating party to determine whether the designating party will remove
5 the confidential designation, whether the document can be redacted, or whether a
6 motion to seal or stipulation and proposed order is warranted pursuant to Federal
7 Rule of Civil Procedure 5.2.

8 **5. DESIGNATING PROTECTED MATERIAL**

9 **5.1 Exercise of Restraint and Care in Designating Material for**
10 **Protection.** Each party or non-party that designates information or items for
11 protection under this agreement must take care to limit any such designation to
12 specific material that qualifies under the appropriate standards. The designating
13 party must designate for protection only those parts of material, documents, items,
14 or oral or written communications that qualify, so that other portions of the
15 material, documents, items, or communications for which protection is not
16 warranted are not swept unjustifiably within the ambit of this agreement.

17 Mass, indiscriminate, or routinized designations are prohibited. Designations
18 that are shown to be clearly unjustified or that have been made for an improper
19 purpose (e.g., to unnecessarily encumber or delay the case development process or
20

1 to impose unnecessary expenses and burdens on other parties) expose the
2 designating party to sanctions.

3 If it comes to a designating party's attention that information or items that it
4 designated for protection do not qualify for protection, the designating party must
5 promptly notify all other parties that it is withdrawing the mistaken designation.

6 **5.2 Manner and Timing of Designations.** Except as otherwise provided
7 in this agreement (see, e.g., second paragraph of section 5.2(a) below), or as
8 otherwise stipulated or ordered, disclosure or discovery material that qualifies for
9 protection under this agreement must be clearly so designated before or when the
10 material is disclosed or produced.

11 a) **Information in documentary form:** (e.g., paper or electronic
12 documents and deposition exhibits, but excluding transcripts of depositions or
13 other pretrial or trial proceedings), the designating party must affix the word
14 "CONFIDENTIAL" to each page that contains confidential material. If only a
15 portion or portions of the material on a page qualifies for protection, the
16 producing party also must clearly identify the protected portion(s) (e.g., by
17 making appropriate markings in the margins).

18 b) **Testimony given in deposition or in other pretrial or trial**
19 **proceedings:** the parties must identify on the record, during the deposition,
20 hearing, or other proceeding, all protected testimony, without prejudice to

1 their right to so designate other testimony after reviewing the transcript. Any
2 party or non-party may, within fifteen (15) days after receiving a deposition
3 transcript, designate portions of the transcript, or exhibits thereto, as
4 confidential.

5 c) **Other tangible items:** the producing party must affix in a
6 prominent place on the exterior of the container or containers in which the
7 information or item is stored the word “CONFIDENTIAL.” If only a portion
8 or portions of the information or item warrant protection, the producing party,
9 to the extent practicable, shall identify the protected portion(s).

10 **5.3 Inadvertent Failures to Designate.** If timely corrected, an inadvertent
11 failure to designate qualified information or items does not, standing alone, waive
12 the designating party’s right to secure protection under this agreement for such
13 material. Upon timely correction of a designation, the receiving party must make
14 reasonable efforts to ensure that the material is treated in accordance with the
15 provisions of this agreement.

16 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

17 **6.1 Timing of Challenges.** Any party or non-party may challenge a
18 designation of confidentiality at any time. Unless a prompt challenge to a
19 designating party’s confidentiality designation is necessary to avoid foreseeable,
20 substantial unfairness, unnecessary economic burdens, or a significant disruption

1 or delay of the litigation, a party does not waive its right to challenge a
2 confidentiality designation by electing not to mount a challenge promptly after the
3 original designation is disclosed.

4 **6.2 Meet and Confer.** The parties must make every attempt to resolve any
5 dispute regarding confidential designations without court involvement. Any motion
6 regarding confidential designations or for a protective order must include a
7 certification, in the motion or in a declaration or affidavit, that the movant has
8 engaged in a good faith meet and confer conference with other affected parties in
9 an effort to resolve the dispute without court action. The certification must list the
10 date, manner, and participants to the conference. A good faith effort to confer
11 requires a face-to-face meeting or a telephone conference.

12 **6.3 Judicial Intervention.** If the parties cannot resolve a challenge without
13 court intervention, the designating party may file and serve a motion to retain
14 confidentiality in compliance with the Federal Rules of Civil Procedure and the
15 Local Rules of this Court. The burden of persuasion in any such motion shall be on
16 the designating party. Frivolous challenges, and those made for an improper
17 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
18 parties) may expose the challenging party to sanctions. All parties shall continue to
19 maintain the material in question as confidential until the Court rules on the
20 challenge.

1 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
2 **PRODUCED IN OTHER LITIGATION**

3 If a party is served with a subpoena or a court order issued in other litigation
4 that compels disclosure of any information or items designated in this action as
5 “CONFIDENTIAL,” that party must:

6 a) Promptly notify the designating party in writing and include a
7 copy of the subpoena or court order;

8 b) Promptly notify in writing the party who caused the subpoena
9 or order to issue in the other litigation that some or all of the material covered
10 by the subpoena or order is subject to this agreement. Such notification shall
11 include a copy of this agreement; and

12 c) Cooperate with respect to all reasonable procedures sought to
13 be pursued by the designating party whose confidential material may be
14 affected.

15 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED**
16 **MATERIAL**

17 If a party learns that, by inadvertence or otherwise, it has disclosed
18 confidential material to any person or in any circumstance not authorized under
19 this agreement, the receiving party must immediately (a) notify in writing all
20 parties of the unauthorized disclosures, (b) use its best efforts to retrieve all
 unauthorized copies of the protected material, (c) inform the person or persons to
 whom unauthorized disclosures were made of all the terms of this agreement, and

(d) request that such person or persons execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a producing party gives notice to receiving parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order or agreement that provides for production without prior privilege review. Non-waiver and claw-back are governed by Federal Rule of Civil Procedure 26(b)(5)(B) and ER 502.

10. NON TERMINATION AND RETURN OF DOCUMENTS

Within sixty (60) days after the termination of this action, including all appeals, each receiving party must return all confidential material to the producing party, including all copies, extracts and summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

Notwithstanding this provision, counsel are entitled to retain one archival copy of all documents filed with the Court, trial, deposition, and hearing transcripts, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain confidential material. Notwithstanding this provision, counsel are entitled

1 to retain one archival copy of all documents filed with the Court, trial, deposition,
2 and hearing transcripts, correspondence, deposition and trial exhibits, expert
3 reports, attorney work product, consultant and expert work product, and all other
4 documents exchanged in discovery, even if such materials contain confidential
5 material.

6 The confidentiality obligations imposed by this agreement shall remain in
7 effect until a designating party agrees otherwise in writing or a court orders
8 otherwise.

9 **IT IS SO ORDERED.**

10 The District Court Clerk is directed to enter this Order and provide copies to
11 counsel.

12 DATED May 19, 2022.



Thomas O. Rice
THOMAS O. RICE
United States District Judge

EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address],
declare under penalty of perjury that I have read in its entirety and understand the
Stipulated Protective Order that was issued by the United States District Court for
the Eastern District of Washington on _____ [date] in the case of
DOES v. Washington State Department of Corrections, et al., Case No. 4:21-cv-
05059-TOR. I agree to comply with and to be bound by all the terms of this
Stipulated Protective Order and I understand and acknowledge that failure to so
comply could expose me to sanctions and punishment in the nature of contempt. I
solemnly promise that I will not disclose in any manner any information or item
that is subject to this Stipulated Protective Order to any person or entity except in
strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District
Court for the Eastern District of Washington for the purpose of enforcing the terms
of this Stipulated Protective Order, even if such enforcement proceedings occur
after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____